IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.608 OF 2006

Ramchandra Chandru Yadav-Patil & Ors. ...Appellants

vs.

Jaywant Jagannath Yadav-Patil & Anr. ...Respondents

Mr.D.S.Sawant i/b Mr.Mugdha Jadhav for the Appellant
Mr.Y.A.Sakhare i/b Mr.Y.K.S.Legal for Respondent Nos.1 and 2.

CORAM: A.S.OKA,J.
DATE : JULY 17, 2007.

P.C.:

1. Heard learned Counsel for the parties. Second Appeal is by the original defendants in a suit for partition filed by the Respondents. The suit was decreed by the trial court and the decree has been confirmed in an Appeal.

2. The first contention of the learned counsel for the Appellant is that the properties bearing house No.441 and agricultural land bearing Gat No.247 were self acquired properties of the original defendant No.1. He submitted that the apart from the fact that the evidence on record establishes that the income was received by the original defendant No.1 from employment, both the properties were purchased by the first defendant as in the sale deeds the first defendant is shown as the purchaser. The second contention is that the courts below have committed an error by excluding the properties which are specifically mentioned in

the paragraph 6-A of the written statement of the defendant No.1. He submitted that as no decree was sought in respect of the said properties, suit itself was not maintainable.

3. I have considered the submissions. In so far as the first contention is concerned, the courts below and in particular the Appellate Court has noted that the first Defendant did not step into the witness box and his constituted attorney entered the witness box and tried to depose about the acquisition of the suit property by the first defendant. There is a finding of fact recorded that the said two properties were purchased in the year 1966 and 1968 when the age of the constituted attorney was about 3 to 4 years. As the constituted attorney of the first defendant has no personal knowledge of the acquisition, the courts below have rightly discarded his evidence. The Appellate Court held that the fact that the properties were acquired in the name of the first defendant is by itself not sufficient to prove that the the said properties are his self acquired properties.

4. As regards the properties described in paragraph 6-A of the written statement of the first Defendant are concerned, it must be noted here that the written statement was originally filed by the first defendant when the second Defendant Jagannath was alive. At that stage, the first defendant did not raise any contention that the properties at Bombay, Thane,

Karad and Malkapur standing in the name of the said Jagannath were also the joint family properties. An amendment was carried out to the written statement of the first Defendant after the demise of the Jagannath the original defendant No.2. The Appellate Court has observed that the constituted attorney of the first defendant stated that when Jagannath was alive, at no point of time any grievance was made as regards the properties standing in the name of the said Jagannath.

5. The findings of fact recorded by the Courts below are based on consideration of oral and documentary evidence on record. There is no perversity in the said findings. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

JUDGE